

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**VIRGIL SMITH, *individually*,
and ADAM SMITH, *through*
his legal guardian, Virgil Smith,**

Plaintiffs,

v.

**PHOENIX SEATING SYSTEMS, LLC,
d/b/a FALCON/LEBAC SYSTEMS,**

Defendant/Third Party Plaintiff,

v.

**VELO ENTERPRISES CO., LTD.,
And RATTOX CORPORATION,**

Third-Party Defendants.

No. 09-cv-568-DRH-DGW

MEMORANDUM AND ORDER

HERNDON, Chief Judge:

Pending before the Court is plaintiffs' motion to dismiss without prejudice (Doc. 126). Plaintiffs seek dismissal without prejudice of defendant Phoenix Seating Systems, LLC d/b/a Falcon/Lebac Systems (Phoenix), and third-party defendants Velo Enterprise Co., Ltd., and Rattox Corporation. Plaintiffs state no defendant or third-party defendant objects to their request. However, the Court **GRANTS** Plaintiffs' motion solely as to defendant Phoenix. Thus, Phoenix is dismissed without prejudice as a defendant from this action. However, as this matter is set for final pretrial conference on January 7, 2013, Phoenix is directed

to inform the Court by **January 3, 2013**, whether a final pretrial conference is still necessary regarding resolution of its pending third party complaint.

IT IS SO ORDERED.

Signed this 28th day of December, 2012.

 Digitally signed by
David R. Herndon
Date: 2012.12.28
10:38:01 -06'00'

**Chief Judge
United States District Court**